

## **INSTRUCTIONS REGARDING PRETRIAL PROCEEDINGS**

### **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA**

The purpose of these instructions is to summarize information contained in the Court's local rules and to direct your attention to specific local court rules pertaining to (1) the scheduling of an early planning conference; (2) the completion of Initial Disclosures; (3) the filing of a Joint Certificate of Interested Persons; (4) the filing of a Joint Preliminary Report and Discovery Plan; (5) the conduct of discovery; (6) the scheduling of the settlement conference after discovery and the reporting of the results of that conference; (7) time limits for various motions; (8) the submission of a proposed Pretrial Order; and (9) the submission of requests to charge. Cases assigned to the Court's 0-months discovery tract are exempted from the LR 16 requirements regarding conferences, filing of a Joint Preliminary Report and Discovery Plan, and filing of a consolidated Pretrial Order.

Counsel are jointly responsible for assuring the orderly conduct of discovery and for submitting promptly the documents requested by the Court without further notice, order, or direction. Failure on the part of any party to cooperate with others in compliance with these instructions may result in the imposition of dismissal, default judgment, or other sanctions as provided by the Federal Rules of Civil Procedure and the Local Rules of this Court.

Plaintiff's counsel is responsible for assuring delivery of a set of these pretrial instructions to defense counsel in conjunction with service of the complaint. Attached to these pretrial instructions are three (3) forms: a form for defense counsel's use in completing Initial Disclosures, a form for counsels' use in submitting the Joint Preliminary Report and Discovery Plan, and a form for presentation of the proposed consolidated Pretrial Order.

### **SUMMARY OF RELEVANT DATES<sup>1</sup>**

Fed.R.Civ.P. 26(f) Conference	Within 16 days after the appearance of a defendant by answer or motion. LR 16.1
Plaintiff and Defendant complete Initial Disclosures	Within 30 days after the appearance of a defendant by answer or motion. Fed.R.Civ.P. 26(a)(1) <sup>2</sup>
Joint Certificate of Interested Persons	Within 30 days after the appearance of a defendant by answer or motion. LR 3.3A
Joint Preliminary Report and Discovery Plan	Within 30 days after the appearance of the first defendant by answer or motion. LR 16.2
Commencement of Limited Discovery Period	Thirty (30) days after the appearance of the first defendant by answer to the complaint. LR 26.2A
Motions not Specially Limited by Rules	Within 30 days after the beginning of discovery unless the filing party has obtained prior permission of the Court to file later. LR 7.1A(2)

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<sup>1</sup>**LR 26.1(B)(4). In Removed Cases.** In civil actions removed to this Court from state court, any time period stated to run from the appearance of a defendant will run from the date the removed case is filed in this Court.

<sup>2</sup>Pursuant to Fed.R.Civ.P. 26(a)(1), Initial Disclosures are due within 14 days after the conference called for by Fed.R.Civ.P. 26(f). For simplicity, the Local Rules assume the Rule 26(f) conference is held on the last appropriate day (16 days after appearance of a defendant) so that the Initial Disclosures will be due on the 30<sup>th</sup> day following appearance by a defendant.

Motions to Compel	Unless otherwise ordered by the Court, prior to close of discovery or, if longer, within 10 days after service of the timely-filed disclosure or discovery response upon which the objection is based. LR 7.2C; 37.1B; Appendix B, Form II
Close of Discovery	Upon expiration of the assigned discovery track, unless the Court has either shortened the time for discovery or has for cause shown extended the time for discovery. Discovery must be initiated sufficiently early in the discovery period to permit the filing of answers and responses thereto within the time limitations of the existing discovery period. LR 26.2A, B; Appendix B, Form II
Settlement Conference after Discovery	No later than 10 days after the close of discovery. LR 16.3
Summary Judgment Motions	As soon as possible, but, unless otherwise ordered by the Court, not later than 20 days after the close of discovery. LR 7.2D and 56.1C; Appendix B, Form II
Proposed Pretrial Order	Not later than 30 days after the close of discovery, or entry of the Court's ruling on any pending motions for summary judgment, whichever is later. LR 16.4A; Appendix B, Form III

Requests to Charge	No later than 9:30 a.m. on the calendar date or specially set date for trial of the case, unless otherwise ordered by the Court. LR 51.1A
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## **INSTRUCTIONS**

### **I. Initial Disclosures**

LR 26.1. Parties to all civil actions, other than those civil actions assigned to the 0-months discovery track, are required to complete court-formulated initial disclosures. The Court has prepared a form, ***Initial Disclosures***, which counsel are required to use. A copy of the form for defense counsel is attached to these instructions. The Initial Disclosures forms for both plaintiffs and defendants may also be found in the Local Rules as Form I in Appendix B. In cases involving multiple defendants, each plaintiff and each defendant must provide separate disclosures unless the disclosures are the same for all plaintiffs or all defendants.

Each party's ***Initial Disclosures*** shall be served simultaneously on all other parties to the action at or within 30 days after the appearance of a defendant by answer or motion unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the action and states the objection in the Fed.R.Civ.P. 26(f) (and LR 16.2) the Joint Preliminary Report and Discovery Plan.

### **II. Certificate of Interested Persons**

LR 3.3. Counsel for all private (nongovernmental) parties shall be required to submit a Joint Certificate of Interested Persons within thirty (30) days after the appearance of a defendant by answer or motion. The certificate must include a listing of all persons, associations of persons, firms, partnerships or corporations having either a financial interest or some other interest which could be substantially affected by the outcome of this particular case. Subsidiaries, conglomerates, affiliates, parent corporations, and any other identifiable legal entity related to a party must be listed.

Lawyers serving in the proceeding must also be listed. A prescribed form for the certificate is set out in LR 3.3C.

### **III. Early Planning Conference**

LR 16.1. Prior to the filing of the Joint Preliminary Report and Discovery Plan, and within 16 days of the appearance of a defendant by answer or motion, lead counsel for all parties are required to confer in person in an effort to settle the case, discuss discovery, limit issues, and discuss other matters addressed in the Joint Preliminary Report and Discovery Plan. Counsel are required to inform the parties promptly of all offers of settlement proposed at the conference. This local rule applies to all cases assigned to the 4- and 8-months discovery tracks. This conference shall comply with the requirements of Fed.R.Civ.P. 26(f).

### **IV. Discovery Limitations**

- A. **Interrogatories.** See Fed.R.Civ.P. 33 and LR 26.3.
- B. **Depositions.** See Fed.R.Civ.P. 30(d); LR 30.1. Unless otherwise authorized by the Court or stipulated by the parties, no deposition of any party or witness shall last more than one day of seven (7) hours.
- C. **Extensions of Time.** LR 26.2. There are three discovery tracks in this Court: 0-months discovery, 4-months discovery, and 8-months discovery. Each case is assigned to a discovery track when the complaint is filed. Discovery must be initiated sufficiently early within the discovery period to permit the filing of answers and responses thereto within the time limitations of the existing discovery period. LR 26.2A. A request for an extension of time for discovery must be filed with the Court prior to the expiration of the existing discovery period. Extensions of time for discovery will be granted only in exceptional cases where the circumstances on which the request is based did not exist or the attorney or attorneys could not have anticipated that such circumstances would arise at the time the preliminary planning report was filed. LR 26.2B.
- D. **Motions to Compel.** LR 7.2C; LR 37.1 (Appendix B, Form II). Fed.R.Civ.P. 37(a)(2)(A)(B) requires the movant to certify that the

movant has conferred or has attempted to confer in good faith with the opposing party prior to filing the motion to compel. This certification is required to be included as a part of all motions to compel. Directions regarding the form and content of a motion to compel are contained in LR 37.1A. Motions to compel may be filed prior to the close of discovery or, if longer, any time within ten (10) days after service of the responses upon which the objection is based.

## **V. Joint Preliminary Report and Discovery Plan**

LR 16.2. The purpose of the *Joint Preliminary Report and Discovery Plan* is to promote early analysis and planning of the case by counsel and to alert the Court to any specific case management needs. The *Joint Preliminary Report and Discovery Plan* is a joint filing by counsel, except that *pro se* litigants and opposing counsel are permitted to file separate statements. The completed form must be filed within thirty (30) days after the appearance of the first defendant by answer or motion. The Court has prepared a standard form which counsel are required to use. A copy of the form is attached to these instructions and may also be found in the Local Rules as Form II in Appendix B. If counsel cannot agree on the answers to specific items, the contentions of each party must be shown on the form. This local rule applies to all cases assigned to the 4- and 8-months discovery tracks.

## **VI. Conference Following Discovery**

LR 16.3. Lead counsel and a person possessing settlement authority for each plaintiff and each defendant are required to meet in person no later than ten (10) days following the close of discovery to discuss, in good faith, settlement of the case. The results of the conference shall be reported in Item 26 of the pretrial order. This local rule applies to all cases assigned to the 4- and 8-months discovery tracks.

## **VII. Motions**

- A. Generally.** All motions filed in this Court shall be made in compliance with the Federal Rules of Civil Procedure and the Local Rules of this Court. See LR 7.1. Motions that are not specially limited in time by the local or federal rules must be filed within thirty (30) days after the beginning of discovery unless the filing party has obtained prior

permission from the Court. LR 7.1A(2); LR 16.2(7) (Appendix B, Form II.)

**B. Motions to Compel.** LR 7.2C; LR 37.1; LR 16.2(7) (Appendix B, Form II) Unless otherwise ordered by the Court, a motion to compel discovery must be filed prior to the close of discovery or, if longer, within ten (10) days after service of the timely filed disclosure or discovery response upon which the motion is based.

**C. Summary Judgment.** LR 7.2D; LR 56.1; LR 16.2(7) (Appendix B, Form II.) Motions for summary judgment shall be filed as soon as possible, but, unless otherwise permitted by Court order, not later than twenty (20) days after the close of discovery. The party opposing the motion has twenty (20) days after service of the motion in which to file a responsive pleading.

### **VIII. Proposed Consolidated Pretrial Order**

LR 16.4A. The Court has prepared a form, ***Pretrial Order***, which counsel shall be required to complete and file with the Court no later than thirty (30) days after the close of discovery, or entry of the Court's ruling on any pending motions for summary judgment, whichever is later. Use of the form ***Pretrial Order***, which is contained in Appendix B of the Local Rules as Form III, is mandatory. A copy of the form is also attached to these instructions. No deviations from this form shall be permitted, except upon the express prior approval of the Court. The form may be retyped, provided it is not modified in any way. Additional copies of the form ***Pretrial Order*** may be obtained from the Public Filing Counter in each division.

It shall be the responsibility of plaintiff's counsel to contact defense counsel to arrange a date for counsel to confer on preparation of the proposed pretrial order. If there are issues upon which counsel for the parties cannot agree, the areas of disagreement must be shown in the proposed pretrial order. In those cases in which there is a pending motion for summary judgment, the Court may, in its discretion and upon request, extend the time for filing the proposed pretrial order.

If counsel desire a pretrial conference, a request must be indicated on the proposed pretrial order immediately below the civil action number. Counsel will be

notified if the judge determines that a pretrial conference is necessary. A case shall be presumed ready for trial on the first calendar after the pretrial order is filed unless another time is specifically set by the Court.

**IX. Requests to Charge**

LR 51.1A. Requests to Charge shall be filed with the courtroom deputy no later than 9:30 a.m. on the calendar date or specially set date for trial of the case, unless otherwise ordered by the Court. The requests shall be numbered sequentially with each request containing the citations to authorities supporting the request presented on a separate sheet of paper. In addition to the original, counsel must file two (2) copies of each request with the clerk and must serve one (1) copy of the requests on opposing counsel. Additional instructions regarding requests to charge are contained in Item 22 of the form *Pretrial Order*.

***BY ORDER OF THE COURT.***

/s/ LUTHER D. THOMAS  
LUTHER D. THOMAS, CLERK OF COURT



**APPENDIX B**

**DOCUMENTS ASSOCIATED  
WITH CIVIL CASES  
PENDING IN THE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

**DOCUMENTS ASSOCIATED  
WITH CIVIL CASES  
PENDING IN THE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

**I. INITIAL DISCLOSURES**

**A. Plaintiff's Initial Disclosures.**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
\_\_\_\_\_ DIVISION

vs.

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Civil Action No. \_\_\_\_\_

**PLAINTIFF'S INITIAL DISCLOSURES**

(1) State precisely the classification of the cause of action being filed, a brief factual outline of the case including plaintiff's contentions as to what defendant did or failed to do, and a succinct statement of the legal issues in the case.

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(2) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which plaintiff contends are applicable to this action.

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(3) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information. (Attach witness list to Initial Disclosures as Attachment A.)

(4) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Initial Disclosures as Attachment B.)

(5) Provide a copy of, or a description by category and location of, all documents, data compilations, and tangible things in your possession, custody, or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)

(6) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary

material available for inspection and copying as under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D.)

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(7) Attach for inspection and copying as under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)

(8) Disclose the full name, address, and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in plaintiff's cause of action and state the basis and extent of such interest.

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**B. Defendant's Initial Disclosures.**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
\_\_\_\_\_ DIVISION

vs.

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Civil Action No. \_\_\_\_\_

**DEFENDANT'S INITIAL DISCLOSURES**

(1) If the defendant is improperly identified, state defendant's correct identification and state whether defendant will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response.

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(2) Provide the names of any parties whom defendant contends are necessary parties to this action, but who have not been named by plaintiff. If defendant contends that there is a question of misjoinder of parties, provide the reasons for defendant's contention.

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(3) Provide a detailed factual basis for the defense or defenses and any counterclaims or crossclaims asserted by defendant in the responsive pleading.

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(4) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which defendant contends are applicable to this action.

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(5) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information. (Attach witness list to Initial Disclosures as Attachment A.)

(6) Provide the name of any person who may be used at trial to present evidence under rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Initial Disclosures as Attachment B.)

(7) Provide a copy of, or description by category and location of, all documents, data compilations, and tangible things in your possession, custody, or control that you

may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)

(8) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D.)

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(9) If defendant contends that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address and telephone number of such person or entity and describe in detail the basis of such liability.

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(10) Attach for inspection and copying as under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)

## II. JOINT PRELIMINARY REPORT AND DISCOVERY PLAN

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
\_\_\_\_\_ DIVISION

vs.

Civil Action No. \_\_\_\_\_

### JOINT PRELIMINARY REPORT AND DISCOVERY PLAN

#### 1. Description of Case:

(a) Describe briefly the nature of this action.

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(b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.

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(c) The legal issues to be tried are as follows:

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(d) The cases listed below (include both style and action number) are:

(1) Pending Related Cases: \_\_\_\_\_

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(2) Previously Adjudicated Related Cases: \_\_\_\_\_

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2. This case is complex because it possesses one (1) or more of the features listed below (please check):

- \_\_\_\_\_ (1) Unusually large number of parties
- \_\_\_\_\_ (2) Unusually large number of claims or defenses
- \_\_\_\_\_ (3) Factual issues are exceptionally complex
- \_\_\_\_\_ (4) Greater than normal volume of evidence
- \_\_\_\_\_ (5) Extended discovery period is needed
- \_\_\_\_\_ (6) Problems locating or preserving evidence
- \_\_\_\_\_ (7) Pending parallel investigations or action by government
- \_\_\_\_\_ (8) Multiple use of experts
- \_\_\_\_\_ (9) Need for discovery outside United States boundaries
- \_\_\_\_\_ (10) Existence of highly technical issues and proof

**3. Counsel:**

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiff: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Defendant: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**4. Jurisdiction:**

Is there any question regarding this Court's jurisdiction?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If "yes," please attach a statement, not to exceed one (1) page, explaining the jurisdictional objection. When there are multiple claims, identify and discuss separately the claim(s) on which the objection is based. Each objection should be supported by authority.

**5. Parties to This Action:**

(a) The following persons are necessary parties who have not been joined:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) The following persons are improperly joined as parties:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

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(d) The parties shall have a continuing duty to inform the court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

## **6. Amendments to the Pleadings:**

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Fed.R.Civ.P. 15. Further instructions regarding amendments are contained in LR 15.

(a) List separately any amendments to the pleadings which the parties anticipate will be necessary:

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(b) Amendments to the pleadings submitted LATER THAN THIRTY (30) DAYS after the Joint Preliminary Report and Discovery Plan is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.

## **7. Filing times for Motions:**

All motions should be filed as soon as possible. The local rules set specific filing limits for some motions. These times are restated below.

All other motions must be filed WITHIN THIRTY (30) DAYS after the beginning of discovery, unless the filing party has obtained prior permission of the court to file later. Local Rule 7.1A(2).

(a) *Motions to Compel*: before the close of discovery or within the extension period allowed in some instances. Local Rule 37.1.

(b) *Summary Judgment Motions*: within twenty (20) days after the close of discovery, unless otherwise permitted by court order. Local Rule 56.1.

(c) *Other Limited Motions*: Refer to Local Rules 7.2A, 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

(d) *Motions Objecting to Expert Testimony*: Daubert motions with regard to expert testimony no later than the date that the proposed pretrial order is submitted. Refer to Local Rule 7.2F.

## **8. Initial Disclosures:**

The parties are required to serve initial disclosures in accordance with Fed.R.Civ.P. 26. If any party objects that initial disclosures are not appropriate, state the party and basis for the party's objection.

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## **9. Request for Scheduling Conference:**

Does any party request a scheduling conference with the Court? If so, please state the issues which could be addressed and the position of each party.

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## **10. Discovery Period:**

The discovery period commences thirty (30) days after the appearance of the first defendant by answer to the complaint. As stated in LR 26.2A, responses to initiated discovery must be completed before expiration of the assigned discovery period.

Cases in this court are assigned to one of the following three (3) discovery tracks: (a) zero (0)-months discovery period, (b) four (4)-months discovery period, and

(c) eight (8)-months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F. The track to which a particular case is assigned is also stamped on the complaint and service copies of the complaint at the time of filing.

Please state below the subjects on which discovery may be needed:

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If the parties anticipate that additional time beyond that allowed by the assigned discovery track will be needed to complete discovery or that discovery should be conducted in phases or be limited to or focused upon particular issues, please state those reasons in detail below:

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#### **11. Discovery Limitation:**

What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or Local Rules of this Court, and what other limitations should be imposed.

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**12. Other Orders:**

What other orders do the parties think that the Court should enter under Rule 26(c) or under Rule 16(b) and (c)?

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**13. Settlement Potential:**

(a) Lead counsel for the parties certify by their signatures below that they conducted a Rule 26(f) conference that was held on \_\_\_\_\_, 20\_\_\_\_, and that they participated in settlement discussions. Other persons who participated in the settlement discussions are listed according to party.

For plaintiff: Lead counsel (signature): \_\_\_\_\_

Other participants: \_\_\_\_\_

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For defendant: Lead counsel (signature): \_\_\_\_\_

Other participants: \_\_\_\_\_

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(b) All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

- ( ) A possibility of settlement before discovery.
- ( ) A possibility of settlement after discovery.
- ( ) A possibility of settlement, but a conference with the judge is needed.
- ( ) No possibility of settlement.

(c) Counsel ( ) do or ( ) do not intend to hold additional settlement conferences among themselves prior to the close of discovery. The proposed date of the next settlement conference is \_\_\_\_\_, 20\_\_\_\_.

(d) The following specific problems have created a hindrance to settlement of this case.

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#### **14. Trial by Magistrate Judge:**

Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(a) The parties ( ) do consent to having this case tried before a Magistrate Judge of this Court. A completed Consent to Jurisdiction by a United States Magistrate Judge form has been submitted to the Clerk of Court this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(b) The parties ( ) do not consent to having this case tried before a Magistrate Judge of this Court.

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Counsel for Plaintiff

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Counsel for Defendant

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## **SCHEDULING ORDER**

Upon review of the information contained in the Joint Preliminary Report and Discovery Plan form completed and filed by the parties, the court orders that the time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement are as set out in the Federal Rules of Civil Procedure and the Local Rules of this Court, except as herein modified:

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\_\_\_\_\_  
\_\_\_\_\_

IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE



### III. PRETRIAL ORDER

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
\_\_\_\_\_ DIVISION

vs.

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Civil Action No. \_\_\_\_\_

Conference (is) (is not) requested

#### **PRETRIAL ORDER**

1.

There are no motions or other matters pending for consideration by the court except as noted:

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\_\_\_\_\_  
\_\_\_\_\_

2.

All discovery has been completed, unless otherwise noted, and the court will not consider any further motions to compel discovery. (Refer to LR 37.1B). Provided there is no resulting delay in readiness for trial, the parties shall, however, be permitted to take the depositions of any persons for the preservation of evidence and for use at trial.

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3.

Unless otherwise noted, the names of the parties as shown in the caption to this Order and the capacity in which they appear are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties.

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4.

Unless otherwise noted, there is no question as to the jurisdiction of the court; jurisdiction is based upon the following code sections. (When there are multiple claims, list each claim and its jurisdictional basis separately.)

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5.

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiff: \_\_\_\_\_

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Defendant: \_\_\_\_\_

Other Parties: (specify) \_\_\_\_\_

6.

Normally, the plaintiff is entitled to open and close arguments to the jury. (Refer to LR 39.3(B)(2)(b)). State below the reasons, if any, why the plaintiff should not be permitted to open arguments to the jury.

7.

The captioned case shall be tried (\_\_\_\_\_) to a jury or (\_\_\_\_\_) to the court without a jury, or (\_\_\_\_\_) the right to trial by jury is disputed.

8.

State whether the parties request that the trial to a jury be bifurcated, i.e., that the same jury consider separately issues such as liability and damages. State briefly the reasons why trial should or should not be bifurcated.

9.

Attached hereto as Attachment "A" and made a part of this Order by reference are the questions which the parties request that the court propound to the jurors concerning their legal qualifications to serve.

10.

Attached hereto as Attachment "B-1" are the general questions which plaintiff wishes to be propounded to the jurors on voir dire examination.

Attached hereto as Attachment "B-2" are the general questions which defendant wishes to be propounded to the jurors on voir dire examination.

Attached hereto as Attachment "B-3", "B-4", etc. are the general questions which the remaining parties, if any, wish to be propounded to the jurors on voir dire examination.

The court, shall question the prospective jurors as to their address and occupation and as to the occupation of a spouse, if any. Counsel may be permitted to ask follow-up questions on these matters. It shall not, therefore, be necessary for counsel to submit questions regarding these matters. The determination of whether the judge or counsel will propound general voir dire questions is a matter of courtroom policy which shall be established by each judge.

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State any objections to plaintiff's voir dire questions:

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State any objections to defendant's voir dire questions:

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State any objections to the voir dire questions of the other parties, if any:

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12.

All civil cases to be tried wholly or in part by jury shall be tried before a jury consisting of not less than six (6) members, unless the parties stipulate otherwise. The parties must state in the space provided below the basis for any requests for additional strikes. Unless otherwise directed herein, each side as a group will be allowed the number of peremptory challenges as provided by 28 U.S.C. § 1870. See Fed.R.Civ.P. 47(b).

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13.

State whether there is any pending related litigation. Describe briefly, including style and civil action number.

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14.

Attached hereto as Attachment "C" is plaintiff's outline of the case which includes a succinct factual summary of plaintiff's cause of action and which shall be neither argumentative nor recite evidence. All relevant rules, regulations, statutes, ordinances, and illustrative case law creating a specific legal duty relied upon by plaintiff shall be listed under a separate heading. In negligence cases, each and every

act of negligence relied upon shall be separately listed. For each item of damage claimed, plaintiff shall separately provide the following information: (a) a brief description of the item claimed, for example, pain and suffering; (b) the dollar amount claimed; and (c) a citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

15.

Attached hereto as Attachment "D" is the defendant's outline of the case which includes a succinct factual summary of all general, special, and affirmative defenses relied upon and which shall be neither argumentative nor recite evidence. All relevant rules, regulations, statutes, ordinances, and illustrative case law relied upon as creating a defense shall be listed under a separate heading. For any counterclaim, the defendant shall separately provide the following information for each item of damage claimed: (a) a brief description of the item claimed; (b) the dollar amount claimed; and (c) a citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

16.

Attached hereto as Attachment "E" are the facts stipulated by the parties. No further evidence will be required as to the facts contained in the stipulation and the stipulation may be read into evidence at the beginning of the trial or at such other time as is appropriate in the trial of the case. It is the duty of counsel to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the non-cooperating counsel.

17.

The legal issues to be tried are as follows:

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18.

Attached hereto as Attachment "F-1" for the plaintiff, Attachment "F-2" for the defendant, and Attachment "F-3", etc. for all other parties is a list of all the witnesses and their addresses for each party. The list must designate the witnesses whom the party will have present at trial and those witnesses whom the party may have present at trial. Expert (any witness who might express an opinion under Rule 702), impeachment and rebuttal witnesses whose use as a witness can be reasonably anticipated must be included. Each party shall also attach to the list a reasonable specific summary of the expected testimony of each expert witness.

All of the other parties may rely upon a representation by a designated party that a witness will be present unless notice to the contrary is given ten (10) days prior to trial to allow the other party(s) to subpoena the witness or to obtain the witness' testimony by other means. Witnesses who are not included on the witness list (including expert, impeachment and rebuttal witnesses whose use should have been reasonably anticipated) will not be permitted to testify, unless expressly authorized by court order based upon a showing that the failure to comply was justified.

19.

Attached hereto as Attachment "G-1" for the plaintiff, "G-2" for the defendant, and "G-3", etc. for all other parties are the typed lists of all documentary and physical evidence that will be tendered at trial. Learned treatises which are expected to be used at trial shall not be admitted as exhibits. Counsel are required, however, to identify all such treatises under a separate heading on the party's exhibit list.

Each party's exhibits shall be numbered serially, beginning with 1, and without the inclusion of any alphabetical or numerical subparts. Adequate space must be left on the left margin of each party's exhibit list for court stamping purposes. A courtesy copy of each party's list must be submitted for use by the judge.

Prior to trial, counsel shall mark the exhibits as numbered on the attached lists by affixing numbered yellow stickers to plaintiff's exhibits, numbered blue stickers to defendant's exhibits, and numbered white stickers to joint exhibits. When there are multiple plaintiffs or defendants, the surname of the particular plaintiff or defendant shall be shown above the number on the stickers for that party's exhibits.

Specific objections to another party's exhibits must be typed on a separate page and must be attached to the exhibit list of the party against whom the objections are raised. Objections as to authenticity, privilege, competency, and, to the extent

possible, relevancy of the exhibits shall be included. Any listed document to which an objection is not raised shall be deemed to have been stipulated as to authenticity by the parties and shall be admitted at trial without further proof of authenticity.

Unless otherwise noted, copies rather than originals of documentary evidence may be used at trial. Documentary or physical exhibits may not be submitted by counsel after filing of the pretrial order, except upon consent of all the parties or permission of the court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during trial to examine exhibits that are or should have been listed.

20.

The following designated portions of the testimony of the persons listed below may be introduced by deposition:

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Any objection to the depositions of the foregoing persons or to any questions or answers in the depositions shall be filed in writing no later than the day the case is first scheduled for trial. Objections not perfected in this manner will be deemed waived or abandoned. All depositions shall be reviewed by counsel and all extraneous and unnecessary matter, including non-essential colloquy of counsel, shall be deleted. Depositions, whether preserved by stenographic means or videotape, shall not go out with the jury.

21.

Attached hereto as Attachments "H-1" for the plaintiff, "H-2" for the defendant, and "H-3", etc. for other parties, are any trial briefs which counsel may wish to file containing citations to legal authority concerning evidentiary questions and any other



legal issues which counsel anticipate will arise during the trial of the case. Limitations, if any, regarding the format and length of trial briefs is a matter of individual practice which shall be established by each judge.

22.

In the event this is a case designated for trial to the court with a jury, requests for charge must be submitted no later than 9:30 a.m. on the date on which the case is calendared (or specially set) for trial. Requests which are not timely filed and which are not otherwise in compliance with LR 51.1, will not be considered. In addition, each party should attach to the requests to charge a short (not more than one (1) page) statement of that party's contentions, covering both claims and defenses, which the court may use in its charge to the jury.

Counsel are directed to refer to the latest edition of the Eleventh Circuit District Judges Association's Pattern Jury Instructions and Devitt and Blackmar's Federal Jury Practice and Instructions in preparing the requests to charge. For those issues not covered by the Pattern Instructions or Devitt and Blackmar, counsel are directed to extract the applicable legal principle (with minimum verbiage) from each cited authority.

23.

If counsel desire for the case to be submitted to the jury in a manner other than upon a general verdict, the form of submission agreed to by all counsel shall be shown in Attachment "I" to this Pretrial Order. If counsel cannot agree on a special form of submission, parties will propose their separate forms for the consideration of the court.

24.

Unless otherwise authorized by the court, arguments in all jury cases shall be limited to one-half hour for each side. Should any party desire any additional time for argument, the request should be noted (and explained) herein.

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25.

If the case is designated for trial to the court without a jury, counsel are directed to submit proposed finding of fact and conclusions of law not later than the opening of trial.

26.

Pursuant to LR 16.3, lead counsel and persons possessing settlement authority to bind the parties met in person on \_\_\_\_\_, 20\_\_\_\_, to discuss in good faith the possibility of settlement of this case. The court (\_\_\_\_\_) has or (\_\_\_\_\_) has not discussed settlement of this case with counsel. It appears at this time that there is:

- (\_\_\_\_\_) A good possibility of settlement.
- (\_\_\_\_\_) Some possibility of settlement.
- (\_\_\_\_\_) Little possibility of settlement.
- (\_\_\_\_\_) No possibility of settlement.

27.

Unless otherwise noted, the court will not consider this case for a special setting, and it will be scheduled by the clerk in accordance with the normal practice of the court.

28.

The plaintiff estimates that it will require \_\_\_\_\_ days to present its evidence. The defendant estimates that it will require \_\_\_\_\_ days to present its evidence. The other parties estimate that it will require \_\_\_\_\_ days to present their evidence. It is estimated that the total trial time is \_\_\_\_\_ days.

29.

**IT IS HEREBY ORDERED** that the above constitutes the pretrial order for the above captioned case (\_\_\_\_\_) submitted by stipulation of the parties or (\_\_\_\_\_) approved by the court after conference with the parties.

IT IS FURTHER ORDERED that the foregoing; including the attachments thereto, constitutes the pretrial order in the above case and that it supersedes the pleadings which are hereby amended to conform hereto and that this Pretrial Order shall not be amended except by Order of the court to prevent manifest injustice. Any attempt to reserve a right to amend or add to any part of the pretrial order after the pretrial order has been filed shall be invalid and of no effect and shall not be binding upon any party or the court, unless specifically authorized in writing by the court.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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UNITED STATES DISTRICT JUDGE

Each of the undersigned counsel for the parties hereby consents to entry of the foregoing pretrial order, which has been prepared in accordance with the form pretrial order adopted by this court.

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Counsel for Plaintiff

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Counsel for Defendant